

Calaveras Superior Court
Civil Law & Motion Calendar
Friday, July 17, 2020
Hon. David M. Sanders, Courtroom #2

9:00 AM 14CV40119 Motion to Compel Responses to Request for Production of Documents, Set One 05/21/2014 07/22/2020 Case Management Conference

Ptff/Pet: Sarkis, Lawrence J.

Atty: Berliner Cohen

Def/Res: Angels Gun Club; Verhalen, Dave

Atty: Porter Scott

Tentative Ruling: On May 21, 2014, the complaint was filed. On April 3, 2015, defendants Angels Gun Club “(AGC)” and Verhalen served a request for production of documents, set one on plaintiff. The parties stipulated to continue this motion until the issue of disqualification of counsel was resolved. The disqualification appeal and stay were resolved in September 2019. After additional meet and confer efforts, the defendants refiled this motion on June 10, 2020, to compel further compliance with requests for documents numbers 1, 2, 8, 12, and 15.

Defendants’ request for judicial notice is GRANTED as to Exhibits A through F pursuant to Evidence Code sections 452 and 453.

The Court GRANTS defendants’ motion to compel plaintiff to provide supplemental responses and documents in response to Requests No. 1, 2, 8, 12, and 15. The Court does not find that the common-interest doctrine, the attorney client privilege or the work product protection apply.

The attorney-client privilege is not waived if co-litigants with a common legal interest share information. (OXY Resources CA LLC v Superior Court (2004) 115 Cal.App.4th 874, 887.) Co-litigants under the common-interest doctrine are similar to joint clients, except that co-litigants have separate counsel. Under California law, the common-interest doctrine is a nonwaiver doctrine, analyzed under the standard waiver principles applicable to attorney-client and work product privileges. (Id. at 889.) To invoke the protection of the common-interest doctrine, a party must establish the following: (a) the information would otherwise be protected from disclosure by a claim of privilege, (Id. at 890); (b) the information was disclosed to a co-litigant who had a common interest in obtaining legal advice relating to the same matter, (Behunin v Superior Court (2017) 9 Cal.App.5th 833, 853); (c) the disclosure of the information was reasonably necessary to accomplish the purpose for which the client consulted the attorney, (Id. at 853); and, (d) the parties had a reasonable expectation that the disclosed information would remain confidential. (Id. at 853.)

Plaintiff fails to meet these elements to invoke the protection of the common-law interest doctrine. The third parties mentioned in the requests for documents are not co-litigants. The interests of plaintiff and the third parties were not, and never have been, aligned at the time of the communication. (See Citizens for Ceres v Superior Court (2013) 217 Cal.App.4th 889, 916 which ruled that communications between lead agency and project applicant under California Environmental Quality Act were not protected by common-interest doctrine because the communications occurred before project approval, when the interests of the agency and applicant were not aligned.)

Additionally, the Court does not find that the disclosure of the information was reasonably necessary to accomplish the purpose for which the client consulted the attorney or that either party had a reasonable expectation that the disclosed information would remain confidential, especially those documents dated prior to March 14, 2014, when the complaint was filed. Additionally, the third parties were not named as parties in this matter.

Although plaintiff spoke to third parties, this communication does not automatically waive the attorney-client privilege. Confidential information can be disclosed to another person with whom the attorney or client must communicate to further the client’s interest in obtaining legal advice. (Seahaus La Jolla Owners Ass’n v Superior Court (2014) 224 Cal.App.4th 754, 768.) Necessary persons may include a spouse, parent, business associate, joint client, or any other person who meets with the client and the attorney about a matter of joint concern. (Benge v Superior Court (1982) 131 Cal.App.3d 336). The Court does not find the third parties whose correspondence is being requested falls within this limited relationship; however, any correspondence between plaintiff and plaintiff’s attorney is privileged and is not ordered to be disclosed.

A necessary third person is any person to whom a confidential communication is disclosed in any of the following circumstances: (1) the disclosure was reasonably necessary to transmit the information between the attorney and the client; (2) the disclosure was reasonably necessary to accomplish the purpose for which the attorney was consulted; or (3) the person was present during the disclosure to further the client's interest in the consultation. (Evidence Code §912(d), 952.) The following persons are included, such as agents, legal secretaries, investigators, stenographers, etc. The Court does not find that the involved third parties are "necessary".

The work-product protection is distinct from and broader than the protection of the attorney-client privilege. (U.S. v Nobles (1975) 422 U.S. 225, 238.) The attorney-client privilege covers only communications between the attorney and the client, while the work-product protection covers all material generated by the attorney, including materials that are never seen by the client. (City of Petaluma v Superior Court (2016) 248 Cal.App. 4th 1023, 1033.) In this matter, the Court does not find the correspondence between the third parties and plaintiff's attorney is work-product protected.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to submit a formal Order pursuant to rule 3.1312 in compliance with this ruling.

9:00 AM	14CV40365	Ptff's Motion to Compel Further Responses to Requests for Production, Set No. Two and for Sanctions	09/19/2014	07/22/2020	Case Management Conference
				07/24/2020	Motion Hearing
Ptff/Pet:	Bachelor, Kathi; Richards, David; Sarkis, Lawrence J.; Von Latta, Chuck		Atty:	Berliner Cohen	
Def/Res:	Angels Gun Club; eta;		Atty:	Porter Scott; Levangie Law Group	

Tentative Ruling: On May 21, 2014, the complaint was filed. On October 30, 2019, plaintiffs propounded a Request for Production of Documents, Set Two. On approximately December 18, 2019, defendants submitted unverified responses and objected to Request No. 13. After additional meet and confer efforts, the plaintiffs filed this motion on May 22, 2020, to compel compliance with Request No. 13.

(Plaintiffs have not complied with Local Rule 3.3.7 enacted January 1, 2018, by failing to include the mandatory language in the notice of motion regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally deficient motion. Based solely upon plaintiffs' failure to comply with Local Rule 3.3.7, the Motion to Compel and Request for Sanctions would be DENIED without prejudice. However, in the interests of justice and judicial economy, the Court reaches the merits of the motion.)

Request for Production of Documents, Set One, No. 13 requests the following: "Copies of any and all applications for Directors and Officers liability insurance submitted to any insurance broker or insurer from January 2013 to the present time, whether or not any such insurance was actually issued." Defendants object on the basis that the request is vague, ambiguous and overbroad, as well as a violation of privacy rights of members regarding personal and financial information. Based on the following, plaintiffs' motion to compel is GRANTED and defendants have thirty days to provide all responsive documents in their care, custody, or control, properly verified.

The scope of discovery is intended to be very broad. (Emerson Elec. Co. v Superior Ct (1997) 16 Cal.4th 1101, 1108.) Because of this broad scope, discovery statutes are interpreted liberally in favor of discovery. (Williams v Superior Ct (2017) 3 Cal.5th 531, 541.) A party can discover any relevant statements made by another party or by a person authorized by the other party to make the statements. (Volkswagen v Superior Court (2006) 139 Cal.App.4th 1481, 1492.)

The Court does not find that the request is vague, ambiguous, or overbroad. The request is clear as to the documents that are being requested. Furthermore, the Court notes a corporation's privacy right is not constitutionally protected. (SCC Acquisitions Inc. v S.C. (2015) 243 Cal.App.4th 741.) Request No. 13 asks specifically for applications submitted by Angel's Gun Club, a corporation. Request No. 13 does not ask for individual defendants' personal information to be disclosed. The discovery request is for additional documents that could lead to the discovery of admissible evidence as to the truth and veracity of the Board of Directors for Angel's Gun Club.

Plaintiffs have requested sanctions. The request for sanctions is DENIED as the Court exercises its discretion to not award sanctions in light of the limited scope of the involved

discovery dispute.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiffs to submit a formal Order pursuant to rule 3.1312 in compliance with this ruling.

9:00 AM	15CV40978	Larry Sergent's Motion to Quash or Modify Deposition Subpoena & Motion to Quash or Modify Deposition Subpoenas for Production of Business Records	07/13/2015	11/03/2020 Trial Confirmation Conference 11/04/2020 Jury Trial
---------	-----------	---	------------	---

Ptff/Pet: Arch Insurance Company; Rehab Focus Home Health Inc.; Sergent, Lawrence R.

Atty: Samuelsen Gonzalez Valenzuela & Brown
Demas Law Group P.c.

Def/Res: Ragan, Janna Marie; Suburban Propane

Atty: Osborn Law Pc

Tentative Ruling: Plaintiff Larry Sergent (hereinafter referred to as “Sergent”) filed a complaint against defendant Suburban Propane (hereinafter referred to as “Suburban”) on July 30, 2015, in case number 15CV41023. Defendant Propane answered on October 26, 2015. The matter was consolidated with 15CV40978 on May 18, 2016. A trial date is currently set for November 4, 2020.

The Court has already ruled the non-expert discovery cutoff has been extended. Therefore, the Court will not relitigate that issue.

The subpoena for the Employment Development Department (“EDD”) requests “any and all files pertaining to Lawrence Sergent . . . including, but not limited to, all applications, claim documents, correspondence, payment records and any other documents that relate in any way to Larry Sergent.”

Between April 20, 2020, and April 30, 2020, defendant Propane sent out over fifty-seven subpoenas requesting plaintiff Sergent’s medical records from various medical providers and facilities. The subpoenas specifically requested “charts and/or files from date of birth to present” for plaintiff Sergent, who alleges the subpoenas are an invasion of his privacy and are overbroad as to time and subject matter.

A person claiming a violation of the constitutional right to privacy under California Constitution, must establish there threshold elements: (1) a legally protected privacy interest, (2) a reasonable expectation of privacy under the circumstances, and (3) a serious invasion of privacy interest. *Lewis v Superior Court* (2017) 3 Cal.5th 561, 571. If these elements are established, the Court must then conduct a balance test to determine whether the intrusion on privacy is justified.

To determine whether the intrusion is justified, the Court must balance the right of litigants to discover relevant facts against the privacy interest of persons subject to discovery. *SCC Acquisitions, Inc. v Superior Court* (2015) 243 Cal.App. 4th 741, 754.

If the case involves an obvious invasion of a privacy interest that is fundamental to the holder’s personal autonomy, a compelling interest or need must be present to overcome the privacy interest. *Williams v Superior Court* (2017) 3 Cal.5th 531, 556. To show a compelling need, the discovering party must demonstrate that the information sought is directly relevant and essential to the fair resolution of the legal proceeding. *Alch v Superior Court* (2008) 165 Cal.App.4th 1412.

Regarding the EDD subpoena, the Court finds that the subpoena involves an invasion of a privacy interest that is fundamental to the holder’s personal autonomy; however, defendant Propane has demonstrated a compelling interest in reviewing EDD’s records. As this is a personal injury action, damages for future wage loss and lost earning capacity are at issue. Defendant Propane is entitled to discovery regarding wage loss and lost earning capacity claims.

Regarding the fifty-seven subpoenas to medical providers and facilities, the Court both GRANTS the motion in part, and DENIES the motion in part. The Court finds the subpoenas involve an invasion of a privacy interest that is fundamental to the holder’s personal autonomy; however, Propane has demonstrated that the information sought is relevant and essential. The Court finds defendant Propane’s requests for all medical records from date of birth to present is an invasion of privacy, as well as overbroad as to time. Therefore,

the subpoenas will be limited to ten years prior to the incident to present. The subpoenas will not be limited as to parts of the body.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff Sergent to prepare a formal order pursuant to Rule 3.1312 in conformity with this ruling.

9:00 AM 17CV42298 Motion Hearing (re-set from 5/29/2020)

04/03/2017

Ptff/Pet: Duncan, Robin

Atty: Wright, D. Marie

Def/Res: Grant & Weber; Mitchell, Stephen Gray

Atty: Steinfeld, Reid Layne; Salazar, Anthony T

Tentative Ruling: On November 20, 2017, plaintiff filed the First Amended Complaint for Partition. On June 15, 2018, at a settlement conference, the Stipulation for Entry of Judgment and Judgment was signed by the parties and filed with the Court.

(Plaintiff has not complied with Local Rule 3.3.7 enacted January 1, 2018, by failing to include the mandatory language in the notice of motion regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally deficient motion. Based solely upon plaintiff's failure to comply with Local Rule 3.3.7, the Motion would be DENIED without prejudice. However, in the interests of justice and judicial economy, the Court reaches the merits of the motion.)

Court interprets this motion as a request to enforce the Stipulated Judgment against defendant. Due to the passing of Ethel Mae Mitchell, the request for substitution of Robin Duncan and Cori Terrio, Ethel Mitchell's co-trustees, in place of Robin Duncan, Attorney in Fact, is GRANTED.

Due to defendant's failure to immediately vacate the premises upon the expiration of his allowed 15 months of continued residency, plaintiff's request for a Writ of Possession is GRANTED.

The Stipulation for Entry of Judgment and Judgment is silent as to rent or any other amount owed by defendant during his allowed time of residency or as to any holdover period. Therefore, the Court does not award damages summarily, but, rather, this would be a matter for a properly noticed motion for disbursement of escrow funds upon any completed sale. Additionally, per the terms of the stipulation, it is ordered that Robin Duncan is authorized to immediately make all necessary arrangements to list and sell the residence by a licensed real estate broker.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff is to submit a formal Order pursuant to rule 3.1312 in compliance with this ruling.

9:00 AM 20CV44512 Ptff/X-Defs' Motion for Leave to file First Amended Complaint
& Ptff/X-Defs' Motion to Compel Production of Documents and for
Monetary Sanctions

01/06/2020

08/19/2020 Case Management Conference

Ptff/Pet: Darby, Lorena; Davis, Amanda; Davis, Randy

Atty: Hamilton, Alan D

Def/Res: Faull, Ronald W.

Atty: Cammack, Stephen Thomas

Tentative Ruling: On January 6, 2020, plaintiffs filed the complaint. On February 24, 2020, defendants filed an answer and a cross-complaint. On March 30, 2020, cross-defendants filed an answer. On June 3, 2020, plaintiffs/cross-defendants filed this motion for leave to file a first amended complaint adding factual allegations seeking an award of punitive damages.

CCP section 576 provides “[a]ny judge, at any time before or after commencement of the trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading . . .” The Court finds plaintiffs timely filed this motion as no trial date has been set. Therefore, plaintiffs’ motion for leave to file the first amended complaint is GRANTED. Plaintiffs shall file and serve the first amended complaint within fifteen (15) court days.

On June 3, 2020, plaintiffs/cross-defendants filed a motion to compel production of documents from their first set of document requests that was propounded on February 3, 2020, and a second set of document requests that was propounded on March 29, 2020. To date, no documents have been received.

Based upon defendants/cross-complainants’ failure to provide the documents or lodge any objection to the requests, as well as not filing an opposition to this motion, plaintiffs’ motion is GRANTED. Defendants/cross-complainants are ordered to provide the requested documents, with verification and without objections, to plaintiffs/cross-defendants’ first and second set of document requests no later than the close of business on August 17, 2020.

Plaintiffs/cross-defendants’ request for sanctions is DENIED as the Court exercises its discretion to not award sanctions as no opposition was filed to the instant motion.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiffs/cross-defendants to prepare a formal Order pursuant to Rule 3.1312 in conformity with this ruling.

9:00 AM	20CV44607	Motion for Leave to file XC & Amended Answer to Complaint	02/26/2020	10/28/2020	Case Management Conference
---------	-----------	---	------------	------------	----------------------------

Ptff/Pet: Maas, Larry

Atty: Gill, Kamalpreet

Def/Res: Forbes, Dave; Forbes, Diane

Atty: Law Office of Alan D. Hamilton

Tentative Ruling: Plaintiff filed a complaint against defendants on February 26, 2020. Defendants, who were self-represented at the time, filed their answer on May 29, 2020. On June 16, 2020, defendants filed this motion requesting leave of court to file a cross-complaint and amend their answer. No trial has been scheduled.

CCP section 428.50 requires that:

(c) A party shall obtain leave of court to file any cross-complaint except one filed within the time specified in subdivision (a) or (b). Leave may be granted in the interest of justice at any time during the course of the action.

CCP section 428.10 requires that: A party against whom a cause of action has been asserted in a complaint or cross-complaint may file a cross-complaint setting forth either or both of the following: (b) Any cause of action he has against a person alleged to be liable thereon, whether or not such person is already a party to the action, if the cause of action asserted in his cross-complaint (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause brought against him.

CCP section 576 provides “[a]ny judge, at any time before or after commencement of the trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading . . .”

The Court GRANTS defendants’ motion. The Court finds defendants timely filed this motion as no trial date has been set and there is no opposition filed by plaintiffs. Defendants have thirty days to file a cross-complaint and an amended answer.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM 18CV43474 Review Hearing

08/08/2018

Ptff/Pet: City of Angels Camp

Atty: Churchwell White Llp

Def/Res: Ashlock, Carroll; Ashlock, Timothy

Atty: Pro Se

Tentative Ruling: This matter was first on calendar on 9/7/18, when the Court granted a continuance until 9/28/18, to allow defendants to file a formal answer. On 9/28/18, the matter was continued until 11/30/18, because there was a pending sale of the property. On 11/30/18, the matter was continued until 5/31/19, because Vincent Vu, attorney for petitioner, requested a continuance as "significant progress has been made in his case." Court directed Mr. Santens, the new owner, to continue to work with the City of Angels. On 5/31/19, upon request of petitioner's counsel the matter was continued until 12/6/19. On 12/6/19, counsel informed the Court that new plans had been submitted and requested a continuance for six months.

To date, no update as to the status of the request for inspection and abatement warrant has been provided to the Court. If the property continues to allegedly contain unsanitary conditions, petitioner's motion for inspection and the issuance of an abatement warrant will be GRANTED; alternatively, if this matter has resolved, or efforts continue to progress, appearances are required to provide the Court a status update.